



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the application of:

Richard R. Van Zile et al.
Serial No: 09/973,584
Filed: October 9, 2001
For: FEMORAL KNEE SAW
GUIDE AND METHOD

Exr.
Art Unit:
Confirmation No.:

BOX RESPONSE
Commissioner of Patents
and Trademarks
Washington, D.C. 20231

October 31, 2003

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TECHNOLOGY CENTER HQ/00

DECLARATION OF DONALD M. SMUCKER

I, Donald M. Smucker, state and declare as follows:

1. I am co-inventor with Richard R. Van Zile and Thomas M. Coon, M.D. of the Femoral Knee Saw Guide and Method which is the subject matter of United States Patent Application Serial No. 09/973,584.

2. Claims 1-3 have been rejected under 35 U.S.C. §102(e) as being anticipated by United States Patent No. 6,458,135 issued October 1, 2002 on an application filed on February 2, 2001.

3. The subject matter of the present invention was conceived and the cutting guide assembly reduced to practice prior to February 2, 2001. Attached hereto are the following documents:

- a. Nemco Medical Drawing No. 12800000-5;
- b. Nemco Medical Drawing No. 12800000-6;
- c. Nemco Medical Drawing No. 12800000-2;

- d. Nemco Medical Drawing No. 12800000-12;
- e. A computer generated perspective view of the femoral knee saw guide of the present invention with the notation Nemco Medical and signature of Richard Van Zile, a co-inventor herein;
- f. A memo entitled "Notes Meeting ref>EMIS Instrumentation UNI Knees";

The dates have been obliterated from each of these documents; however, each of these documents bears a date which is prior to the filing date of February 2, 2001 for U.S. Patent No. 6,458,135, the reference cited in the rejection of claims 1-3.

4. It is believed that these documents clearly establish that the invention which is the subject matter of the present invention was made prior to the February 2, 2001 filing date of U.S. Patent No. 6,458,135.

5. I hereby further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the likes so made are punishable by fine or imprisonment, or both, under section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Further declarant sayeth not

Date: 11-17-03


Donald M. Smucker